

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of

1998 Biennial Regulatory Review –
Reform of the International Settlements
Policy and Associated Filing Requirements

Regulation of International
Accounting Rates

IB Docket No. 98-148

CC Docket No. 90-337

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Summary

GSA urges the Commission to reject requests for general reductions in international settlements requirements. Based on the comments submitted by incumbent carriers as well as new carriers, GSA recommends that the Commission exercise caution by ruling that the settlements procedures should no longer be applied to an international route only if there is clear evidence of viable competition on that route.

Moreover, parties responding to the NPRM do not provide viable justification for permitting additional “flexible settlements” arrangements. Since these arrangements have little apparent benefit in fostering more competition, GSA recommends that the present policies concerning flexible settlements remain intact.

GSA also urges the Commission to exercise caution in extending the opportunities for international simple resale. GSA concurs with the comments of a major carrier that allowing international simple resale for all countries or introducing a quota on all routes would do little or nothing to lower settlement rates. Therefore, GSA stands by its previous recommendation that ISR rules be relaxed only if the Commission employs strong competitive safeguards, including traffic reports on a route-by-route basis, to detect any significant actions that may harm consumers.

Finally, GSA urges the Commission to deny requests to discontinue the No Special Concessions rule. This rule benefits end users because it gives all carriers equal status in concluding operating agreements and in negotiating interconnection arrangements. Moreover, the rule helps ensure that all carriers have equal status with respect to preventive maintenance, corrective maintenance, and service quality.

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The General Services Administration (“GSA”) submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies (“FEAs”) in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) released on August 6, 1998. The NPRM invites comments and replies on changes to the International Settlements Policy (“ISP”) and the associated rules adopted by the Commission.

I. INTRODUCTION

The Telecommunications Act of 1996 directs the Commission to conduct a biennial review of regulations issued pursuant to this legislation to determine whether they are still necessary in view of the current level of competition between firms providing telecommunications services.¹ The NPRM responds to these statutory

¹ Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* (“Telecommunications Act”), at § 161.

requirements by outlining a number of proposals to modify the Commission's policies and rules that might potentially result in significant rate reductions by carriers providing international switched message services.

GSA submitted Comments in response to the NPRM to explain its position and to make recommendations as an end user of international telecommunications services. In those Comments, GSA stated that the international settlements requirements could be modified if there is clear evidence of substantial competition. However, GSA urged the Commission not to discard the existing settlements procedures for traffic interchanged with foreign carriers that have strong positions in their own markets. Moreover, GSA recommended that the Commission employ conservative standards in determining whether or not to relax ISP rules. To maximize the opportunities for rate reductions that will benefit end users, competitive conditions should be evaluated on a carrier-by-carrier and route-by-route basis.

About 20 other parties submitted comments to address the issues in the NPRM. These parties include:

- 12 U.S.-based carriers that are authorized by the Commission to provide international services;
- 4 carriers based outside the U.S., but authorized to provide international services;
- 3 incumbent local exchange carriers ("LECs"); and
- 2 associations of international carriers.

In these Reply Comments, GSA responds to the positions advanced of these parties.

**II. THE COMMISSION SHOULD REJECT REQUESTS FOR
GENERAL REDUCTIONS IN SETTLEMENTS REQUIREMENTS.**

**A. Settlements requirements should be reduced only for
routes with clear evidence of competition.**

For more than 60 years, the Commission has employed ISP to facilitate orderly participation by U.S. carriers in bilateral rate negotiations.² However, because of changes in competitive conditions and technologies, policies that have protected carriers and users may now inhibit innovation and result in higher prices for international services.³ In this NPRM, the Commission proposes to discontinue the requirements on U.S. carriers to comply with the settlements formulas for traffic interchanged with (1) all carriers in nations that are members of the World Trade Organization ("WTO") for which the Commission has authorized International Simple Resale ("ISR"), and (2) all other carriers in WTO member nations that lack significant market power.⁴

Several carriers suggest that the Commission should take much larger steps to dismantle the settlements regulations. For example, GTE contends that business and technological changes have "marginalized the ISP" and removed the public-interest rationale for the regulations that it contains.⁵ According to GTE, the Commission should eliminate the ISP and its associated filing requirements on all routes between the U.S. and WTO member nations, regardless of the market shares of the overseas carriers.⁶

² NPRM, para. 6.

³ *Id.*, paras 7-10.

⁴ *Id.*

⁵ Comments of GTE, p. 1.

⁶ *Id.*, p. 2.

In its comments addressing this issue, the Competitive Telecommunications Association ("CompTel") also supports removing ISP requirements from routes regardless of the market shares of the respective competitors. CompTel contends that removing ISP on routes to WTO member countries with multiple facilities-based foreign carriers is now justified.⁷ According to CompTel, ISP should not apply to any arrangements between U.S. and foreign carriers that face competition from two or more facilities-based carriers on WTO-country routes, regardless of the market shares of the carriers involved.⁸

In comments filed in response to the NPRM, GSA urged the Commission to be cautious in determining whether or not settlements requirements should be relaxed.⁹ To protect consumers, each case should be evaluated and decided on a carrier-by-carrier and route-by-route basis.

The comments submitted by several other parties in response to the NPRM show that, if anything, GSA has understated the need for caution in relaxing the ISP. For example, Ameritech explains that elimination of the ISP will reduce settlements costs and promote more competition among U.S. carriers only if there is significant competition at the start.¹⁰ Ameritech explains, "By focusing exclusively on whether a carrier on the foreign end of a particular route has market power in a relevant market, the Commission's proposals fail to account for the fact that a U.S. carrier that negotiates an alternative settlement arrangement affecting a significant portion of

⁷ Comments of CompTel, p. 5.

⁸ *Id.*

⁹ Comments of GSA, p. 6.

¹⁰ Comments of Ameritech, p. 3.

traffic along a particular international route may be able to gain an unfair advantage over other U.S. carriers."¹¹

The world's largest international carrier, AT&T, explains that in the international switched telecommunications market there often is not a clear answer to the question of whether an individual carrier has significant market power.¹² This carrier claims market shares of approximately 50 percent on some international routes,¹³ but nevertheless cautions that it is important to allow the Commission and interested parties to review the competitive status of particular routes following mergers, acquisitions or other changes that change the field of participants in the international markets.¹⁴ AT&T states:

Reliance on non-existent or highly imperfect market forces cannot substitute for the Commission's proven regulatory policies in protecting the interests of U.S. consumers and carriers against the abuse of foreign market power.¹⁵

GSA concurs with AT&T's position on this issue, and urges the Commission to eliminate requirements for adherence to settlement procedures only where this step will have no anti-competitive results.

B. More U.S. carriers may be able to participate in international markets if settlements procedures are continued.

The previous discussion demonstrates that even the largest U.S.-based international carriers are concerned with the potentially harmful impacts of limiting the application of ISP in some instances. Some smaller international carriers express

¹¹ *Id.*

¹² Comments of AT&T Corp. ("AT&T"), p. 5.

¹³ *Id.*, pp. 18-19.

¹⁴ *Id.*

¹⁵ *Id.*, p. ii.

additional concerns, based on parallel experience in the domestic telecommunications markets.

For example, PrimeTEC states that Commission's policies of encouraging smaller carriers to compete in the domestic message toll markets have proved to be instrumental in reducing long distance rates.¹⁶ Similarly, PrimeTEC explains, "[i]nternational calling rates will not approach cost-based levels unless Commission policies *not only* aim to reduce inflated settlement rates, *but also* create conditions under which smaller carriers may engage in vigorous pricing competition with the communications giants."¹⁷ PrimeTEC concludes that reforming the ISP without implementing safeguards would defeat the goals of the WTO accord as newer entrants overseas (and in the United States) found themselves priced out of the market.¹⁸

These comments and the comments by other carriers demonstrate that newer U.S. international carriers may be able to develop niche markets, such as data services to specific WTO members, if the settlement procedures are continued.¹⁹ GSA urges the Commission to evaluate the full competitive mix of all carriers (U.S.-based and the carriers at the overseas end) for the various services on a route before deciding to discontinue settlements practices.

III. COMMENTING PARTIES DO NOT JUSTIFY ALLOWING ADDITIONAL "FLEXIBLE SETTLEMENTS" ARRANGEMENTS.

Under the present settlements rules, a U.S. carrier may employ a flexible pricing arrangement with a foreign carrier by filing a petition for declaratory ruling and a copy

¹⁶ Comments of PrimeTEC International, Inc. ("PrimeTEC"), p. 2.

¹⁷ *Id.*

¹⁸ *Id.*, p. 3.

¹⁹ Comments of Ameritech, pp. 1-3.

of the rate plan with the Commission.²⁰ The NPRM proposes to relax the rules concerning these flexible settlement arrangements. Specifically, for alternative arrangements between unaffiliated carriers affecting less than 25 percent of the inbound or outbound traffic on a route, a U.S. carrier could petition for approval of an agreement for flexible pricing without filing a summary of its terms and conditions, or even identifying the foreign correspondent.²¹

GSA explained in its Comments that relaxation of flexible pricing rules would not motivate administrations in other countries to authorize multiple carriers to participate in providing service on any route.²² Also, such changes would not encourage more U.S. carriers to offer services.²³ Although several carriers support flexible settlements arrangements, these carriers do not adequately explain how unreported arrangements motivate more competition to develop.

In its comments addressing proposed changes in the settlement rules, SBC Communications ("SBC") asserts that the requirement to file pricing agreements with the Commission reduces incentives for carriers to negotiate aggressively, because of the possibility that competitors would try to negotiate an agreement with the same or better terms.²⁴ Moreover, according to SBC, disclosing the substantive terms of alternative arrangements could "result in spurious ill-conceived complaints from competitors that consume the administrative resources of the Commission and delay the implementation of pro-competitive arrangements."²⁵

²⁰ NPRM, para. 32.

²¹ *Id.*

²² Comments of GSA, p. 7.

²³ *Id.*

²⁴ Comments of SBC, p. 12.

²⁵ *Id.*

GSA urges the Commission to reject these claims. Even if some complaints are "ill-conceived," others may have a sound basis. Regulators should have access to the information necessary to evaluate complaints and determine if they are justified. Secret arrangements will not help to reduce the charges to the public for international telecommunications services.

Some carriers contend that "flexible" arrangements should be permitted if they affect a fairly small part of the traffic on the route. For example, Ameritech supports flexibility for a carrier on a route if the carrier carries less than 25 percent of the total traffic.²⁶ However, as AT&T explains, this distinction in market share places the largest carriers at a severe competitive disadvantage relative to their competitors.²⁷ In fact, as AT&T notes, if the Commission were to allow "secret under 25 percent flexibility arrangements" in concert with other proposed changes to relax settlements policies, foreign monopoly carriers with above-benchmark rates would be the only possible beneficiaries.²⁸

IV. CONTRARY TO CLAIMS BY SOME CARRIERS, RULES CONCERNING INTERNATIONAL SIMPLE RESALE SHOULD BE RELAXED ONLY WITH ADDITIONAL COMPETITIVE SAFEGUARDS.

The rules concerning International Simple Resale ("ISR") allow U.S. carriers to carry international switched message traffic over lines designated for private line traffic without the requirement for settlements at the prescribed accounting rate and the constraint that inbound traffic be subject to proportionate return calculations.²⁹ At

²⁶ Comments of Ameritech, p. 4.

²⁷ Comments of AT&T, pp. 18-19.

²⁸ *Id.*, p. 30.

²⁹ NPRM, para. 12.

present, U.S. carriers may engage in ISR only on routes to a WTO member country where 50 percent of the traffic is settled at or below benchmark rates established by the Commission, or to a WTO member country that permits equivalent resale opportunities.³⁰ For service to non-WTO member countries, ISR is authorized only where 50 percent of the traffic is settled at or below benchmark rates, and if the overseas administration permits equivalent resale opportunities.³¹

An important objective of the ISR rules is to forestall “one-way bypass” of the accounting system, where dedicated private lines are used only for inbound traffic.³² In its Comments, GSA expressed concern with the Commission’s observation that “one-way bypass” could lead to increased prices.³³

The NPRM discussed several possible modifications in the ISR rules. For example, ISR might be permitted for a specifically designated amount of traffic on routes for which it is not now allowed at all.³⁴ Alternatively, the entire ISR requirement might be abolished when international markets as a whole have become sufficiently competitive, as measured by the percentage of routes meeting the current ISR criteria.³⁵

Several carriers advance their own proposals to reduce restrictions on ISR. For example, Cable and Wireless USA (“C&W USA”) urges the Commission to “greatly expand” ISR on as many routes as possible to WTO member nations.³⁶ To extend ISR

30 *Id.*

31 *Id.*

32 Comments of GSA, p. 9.

33 *Id.*; and NPRM, para. 37.

34 *Id.*, para. 38.

35 *Id.*

36 Comments of C&W USA, Inc., p. 2.

authority, C&W USA recommends that the Commission adopt a rebuttable presumption that all carriers holding Section 214 licenses to provide resold switched voice service on WTO member country routes be permitted to provide ISR.³⁷ Moreover, C&W USA asserts that the Commission should permit carriers to provide ISR for a limited amount of traffic on routes for which they were not otherwise authorized under the existing rules.³⁸ Furthermore, according to this carrier, the Commission's ISR rules should be modified to recognize subsets of services, which would give more flexibility in dealing with arrangements with foreign administrations that do not open their markets to all types of services at the same time.³⁹

GSA disagrees with carriers claiming that the Commission should significantly extend the opportunities for ISR. In its Comments, GSA noted that removal of limitations on ISR may lead to "one-way bypass" of the accounting rate system, where private lines are used only for inbound traffic and outbound traffic remains subject to the accounting rate system.⁴⁰ This process could lead to increased prices for consumers in the U.S.

Comments filed in response to the NPRM by other carriers further underline the dangers of extend ISR without such safeguards. For example, Sprint opposes any modifications in the current ISR policy.⁴¹ Sprint states, "Relaxation of these rules will not only encourage one-way bypass but will also undermine the Commission's efforts to reform settlement rates."⁴²

³⁷ *Id.*, p. 3.

³⁸ *Id.*, p. 4.

³⁹ *Id.*

⁴⁰ Comments of GSA, p. 9.

⁴¹ Comments of Sprint Corporation ("Sprint"), p. 10.

⁴² *Id.*

Another international carrier, AT&T, provides the most detailed explanation of why changes in ISR rules will not help to foster competition. AT&T states:

Opening ISR to all countries at some future point or introducing an "ISR quota" on all routes would do little or nothing to lower settlement rates, as most of the new countries to which ISR would be authorized do not allow U.S.-outbound calls to be terminated in this way. However, it would undoubtedly encourage one-way in-bound bypass by the foreign carriers with the greatest incentives to engage in this activity.⁴³

Moreover, as AT&T notes, it is not clear how ISR limits on each route could be distributed among carriers on an equitable basis and consistent with the antitrust laws, without extensive regulation by the Commission.⁴⁴

GSA stands by the recommendation in its Comments that ISR rules be relaxed only if the Commission employs strong competitive safeguards, including traffic reports on a route-by-route basis, to detect any significant actions that may harm consumers as they develop.⁴⁵

V. THE COMMISSION SHOULD NOT GRANT REQUESTS TO DISCONTINUE THE "NO SPECIAL CONCESSIONS" RULE.

The "No Special Concessions" rule prohibits U.S. carriers from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power to adversely affect competition.⁴⁶ The rule encompasses a wide variety of concessions, including arrangements relating to operating agreements,

⁴³ Comments of AT&T, p. 30.

⁴⁴ *Id.*

⁴⁵ *Id.*, p. 10.

⁴⁶ 47 C.F.R. § 63.14(a)(1998); and NPRM, para. 40.

interconnection of international facilities, private line provisioning and maintenance, as well as the quality of service.⁴⁷

GSA explained that the Commission should not discontinue the No Special Concessions rule because policies that give all carriers equal status in concluding operating agreements and negotiating interconnection arrangements will benefit end users. Also, as end users of critical international data services, Federal agencies are particularly sensitive to the importance of preventive maintenance, corrective maintenance, and high service quality.

Several carriers urge the Commission to abandon the No Special Concessions rule. For example, Ameritech supports elimination of the rule in all cases where the formal settlements procedures do not apply.⁴⁸ Telia North America, Inc., ("TNA") a subsidiary of a firm providing telecommunications services in Sweden, contends that exemption from the No Special Concessions rule should be a minimum step in any relaxation of the settlements policy.⁴⁹ In addition, a subsidiary of Nippon Telegraph and Telephone Corporation asserts that the Commission should go beyond dropping the rule only for routes with ISR and consider eliminating it completely for carriers based in WTO member nations.⁵⁰

Some international carriers effectively dispute these claims. These carriers agree with GSA's position in support of continuing to prohibit special concessions. For example, PrimeTEC states that the No Special Concessions rule is important in preserving the ability of smaller carriers to interconnect and compete in the

⁴⁷ NPRM, para. 40.

⁴⁸ Comments of Ameritech, p. 7.

⁴⁹ Comments of TNA, p. 6.

⁵⁰ Comment of ntt.co, inc., pp. 9-10.

international marketplace.⁵¹ PrimeTEC explains that without the rule, carriers based outside the U.S. could engage in a “host of discriminatory actions with respect to price, interconnection, quality of service, *etc.* in favor of their own affiliates, joint venture partners, and the larger U.S. carriers that handle greater traffic volumes.”⁵²

Indeed, even carriers with large international traffic volumes support continuing the No Special Concessions rule. For example, although MCI WorldCom favors liberalization of the Commission’s settlements procedures, this carrier supports retention of the rule prohibiting special concessions.⁵³ MCI WorldCom agrees with GSA’s position that this safeguard deters anticompetitive conduct by dominant foreign carriers, particularly those with U.S. affiliates.⁵⁴

On balance, discontinuance of the No Special Concessions rule has few significant advantages for consumers or for carriers. GSA urges the Commission to continue this requirement.

51 Comments of PrimeTEC, p. 8.

52 *Id.*

53 Comments of MCI WorldCom, p. 2.

54 *Id.*; and Comments of GSA, pp. 10–11.

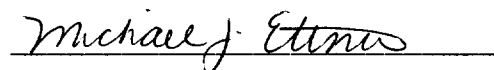
VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations concerning settlements procedures for international telecommunications set forth in these Reply Comments.

Respectfully submitted,

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